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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170712657-7999-02]

RIN 0648-BG85

International Fisheries; Pacific Tuna Fisheries; Restrictions on Fishing for Sharks in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-16-05 (*Resolution on the Management of Shark Species*) of the Inter-American Tropical Tuna Commission (IATTC) adopted in July 2016. Per the Resolution, these regulations require purse seine vessel owners, operators, and crew to follow specified release requirements for sharks in the eastern Pacific Ocean (EPO). These regulations also prohibit longline vessels targeting tuna or swordfish in the EPO from using “shark lines” (a type of fishing gear used on longline vessels to target sharks). This rule is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: This rule is effective January 1, 2018.

ADDRESSES: Copies of the Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0068, or by contacting the Regional Administrator, Barry A. Thom, NMFS West

Coast Region, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232-1274, or
RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Daniel Studt, NMFS, West Coast Region,
562-980-4073.

SUPPLEMENTARY INFORMATION:

On August 7, 2017, NMFS published a proposed rule in the **Federal Register** (82 FR 36724) to implement provisions of Resolution C-16-05 adopted by the IATTC in July 2016. The 30-day public comment period for the proposed rule closed on September 6, 2017, and one comment was received from an individual in support of the proposed rule as drafted. NMFS is finalizing the rule as proposed, except for non-substantive revisions as described below. The preamble to the proposed rule contains additional background information, including information on the IATTC, the international obligations of the United States as an IATTC member, and the need for regulations.

This final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by title II of Public Law 114-81. The recent amendments direct the Secretary of Commerce, in consultation with the Secretary of State, and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS. This rule implements provisions of Resolutions C-16-05 for U.S. commercial fishing vessels that fish for tuna or tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of

the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude.

This final rule requires that the crew, operator, and owner of a U.S. commercial purse seine fishing vessel promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner of a U.S. commercial purse seine vessel must follow the release procedures described in the regulatory text at 50 CFR 300.27(k).

This rule also prohibits the towing of a whale shark (*Rhincondon typus*) out of a purse seine net (e.g., using towing ropes).

Furthermore, this rule prohibits longline vessels targeting tuna or swordfish in the IATTC Convention Area from using “shark lines.”

Lastly, this final rule updates paragraph references in 50 CFR 300.24 for consistency and accuracy with existing regulations.

Public Comment and Response

NMFS received one written comment from an individual during the 30-day public comment period that closed on September 6, 2017. The individual supported the proposed rulemaking and noted shark populations’ vulnerability to threats.

Changes from the Proposed Rule

There are no changes to the regulatory text in the final rule from the proposed rule except that 50 CFR 300.27(b) has been revised by removing the phrase in parentheses, “other than silky shark, oceanic whitetip shark, and whale shark, which may not be retained for consumption”. NMFS removed this parenthetical language from the regulatory text of the final

rule because it was unnecessary: oceanic whitetip, silky or whale sharks are already required to be released as soon as possible; as a result, those three types of shark may never be retained even for the purpose of consumption. Also, for consistency with other definitions in 50 CFR 300.21, a colon was removed from the shark line definition in the proposed rule. Furthermore, paragraph 50 CFR 300.24(ii) was removed by a final rule on September 29, 2017 (82 FR 45514); therefore, paragraph additions of 50 CFR 300.24(jj) and (kk) have been updated to 50 CFR 300.24(ii) and (jj), respectively.

Classification

The NMFS Assistant Administrator, in consultation with the Department of State and the U.S. Coast Guard, has determined that this final rule is consistent with the Tuna Conventions Act and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Paperwork Reduction Act Collection of Information

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Numbers: 0648-0148, 0648-0214, and 0648-0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information

subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a Regulatory Flexibility Analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 21, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. In § 300.21, add a definition for “Shark line” in alphabetical order to read as follows:

§ 300.21 Definitions.

* * * * *

Shark line means a type of fishing gear used to target sharks and consisting of an individual hooked line or hooked lines attached to the floatline or directly to the floats of longline gear and deployed in the water column at depths shallower than the mainline.

* * * * *

3. In § 300.24, revise paragraphs (w), (x), (cc), and (dd), and add paragraphs (ii) and (jj) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.27(g).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.27(h).

* * * * *

(cc) To retain on board, transship, store, land, sell, or offer for sale any part or whole carcass of a mobulid ray, as described in § 300.27(i).

(dd) Fail to handle or release a mobulid ray as required in § 300.27(j).

* * * * *

(ii) Fail to handle or release a shark as required in § 300.27(k).

(jj) Use a shark line in contravention of § 300.27(l).

4. In § 300.27, revise paragraphs (b) and (h), and add paragraphs (k) and (l) to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(b) *Release requirements for non-tuna species on purse seine vessels.* All purse seine vessels must release all billfish, ray (not including mobulid rays, which are subject to paragraph (i) of this section), dorado (*Coryphaena hippurus*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. Sharks caught in the IATTC Convention Area and that are not retained for consumption aboard the vessel must be released according to the requirements in paragraph (k) of this section.

* * * * *

(h) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release. No whale shark may be towed out of a purse seine net (e.g., using towing ropes).

* * * * *

(k) *Shark handling and release requirements for purse seine vessels.* The crew, operator, and owner of a U.S. commercial purse seine fishing vessel must promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If

a shark is live when caught, the crew, operator, or owner must follow release procedures in the following two paragraphs.

(1) Sharks must be released out of the purse seine net by directly releasing the shark from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available.

(2) No shark may be gaffed or hooked, lifted by the head, tail, gill slits or spiracles, or lifted by using bind wire against or inserted through the body, and no holes may be punched through the bodies of sharks (e.g., to pass a cable through for lifting the shark).

(1) *Shark line prohibition for longline vessels.* Any U.S. longline vessel used to fish for tuna or swordfish is prohibited from using any shark line in the IATTC Convention Area.

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